IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5389 of 2000
With
CIVIL APPLICATION No.7317 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUBABEN DADBHAI KAHOR CHARITABLE TRUST
Versus
COLLECTOR

Appearance:
1. Special Civil Application No. 5389 of 2000
MR HARIN P RAVAL for Petitioner No. 1-2
MR KAMAL TRIVEDI, ADDITIONAL ADVOCATE GENERAL with
MR AD OZA, GOVERNMENT PLEADER for Respondent No. 1-3
NOTICE SERVED BY DS for Respondent No. 1-6
MR NIRAJ V ASHAR for Respondent No. 4
MR HS MUNSHAW for Respondent No. 5
MR SS SHAH for Respondent No. 6

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/10/2002

ORAL JUDGEMENT

#. The petitioners - Trusts have challenged the order passed by the Collector dated 24.5.2000. The Collector, while considering the report of the Mamlatdar, Vadia dated 22.5.2000, as well as considering the provisions of Section 110(1) and (2) of the Gujarat Panchayats Act, passed the order of resumption of the properties in question by cancelling various resolutions passed by the Gram Panchayat at the relevant time. The Vadia Gram Panchayat passed various resolutions in connection with the properties of village Vadia. By way of such resolutions, the decision was taken to transfer the management of the school viz. Suragwala Sarvajanik High School, Vadia, which was under the administration of the Gram Panchayat. By the said resolutions, building and other properties of the said school were ordered to be transferred to petitioner No.1 - Trust. Copies of such resolutions are also annexed with Civil Application No.7317 of 2002, which is filed by the Taluka Development Officer. So far as Resolution No.9, which is dated 10.4.2000 is concerned, it is regarding transferring certain land on 99 years lease basis in favour of petitioner NO.2 - Trust. By another Resolution No.13, the Panchayat decided to transfer certain land also on 99 years lease basis for the purpose of some sports complex of the school. By way of the resolution, being Resolution No.18 dated 26.7.1999, certain open land of the Panchayat was transferred to petitioner NO.2 - Trust on 99 years lease basis. The aforesaid resolutions were set aside by the Collector on the ground that, prior permission of the competent authority was not obtained before transferring or selling the said properties and accordingly, the Collector passed the impugned order. The said order of the Collector is challenged at the instance of the petitioners - Trusts on various grounds.

#. This petition is admitted by this Court and interim relief was also granted. At this stage, Civil Application No.7317 of 2002 is filed by the Taluka Development Corporation for vacating interim relief.

#. At the time of hearing the said Civil Application, all the learned advocates, who are appearing in these matters, have agreed that, instead of deciding Civil Application, the entire special civil application may be finally disposed of, and, accordingly, I am disposing of the petition on its own merits, today.

#. On behalf of the petitioners, it is argued by Mr.Raval that under the provisions of Section 110 of the Act, the Collector can never be said to be a competent authority and it is the District Development Officer, who can consider the validity of such resolutions under the provisions of the Gujarat Panchayats Act. He further submitted that, the competent authority under Section 110 of the Act is the District Development Officer and not the Collector. So far as the affairs of the Gram Panchayat is concerned, the District Development Officer has absolute control over such affairs, as well as the Taluka Development Officer is also having such powers under Section 249 of the Act to consider such resolutions of the Gram Panchayat.

#. Mr.Kavina has pointed out that, by order dated 1.8.2001, the Taluka Development Officer has set aside all the resolutions of the Gram Panchayat after considering the provisions of Section 110 of the Act.

#. It seems that, Mr.Raval is right in his contention to the effect that such powers are required to be exercised only by the District Development Officer. Mr.Raval further submitted that, it is for the District Development Officer to decide, whether such decisions of the Gram Panchayat in transferring the properties in question, are required to be approved, or, whether any permission for such transfer is required to be given.

#. At this juncture, I am not deciding the merits of the issue, whether such resolutions have been passed by the Gram Panchayat in accordance with law, or not, or about rationality and legality of such resolutions. It is not in dispute that, before transferring the properties in question, sanction is required to be obtained under Section 110 of the Act, which is admittedly not taken in the present case. Under these circumstances, the District Development Officer, Amreli is directed to decide the issue in connection with the resolutions passed by the erst-while Gram Panchayat, as discussed earlier, and, to take appropriate decision, whether any approval can be given for transferring the properties in question as contemplated by Section 110 of the Act as well as about merits of such resolutions passed by the erst-while Gram Panchayat. The District Development Officer shall decide the said question about approving or setting aside such resolutions passed by the earlier Panchayat in accordance with law. The District Development Officer is accordingly directed to take appropriate decision in the subject matter, as indicated

above. It will be open for the Gram Panchayat to apply to the District Development Officer / Taluka Development Officer in connection with granting permission for transferring the aforesaid properties. If any such application is made by the Panchayat to the Taluka Development Officer, the Taluka Development Officer shall forward the same to the District Development Officer for his consideration. The Taluka Development Officer is also directed to send all the copies of the resolutions in question to the District Development Officer so that the District Development Officer can take appropriate decision in connection with the subject matter. Before taking any final decision as aforesaid, the District Development Officer shall give hearing to the petitioners - Trusts, and after hearing all the concerned parties, the District Development Officer may take final decision in connection with the subject matter. It is for the District Development Officer to take decision, whether resolutions passed by the Panchayat are required to be approved or not, and, whether, the same are in accordance with law or not, latest by 30.11.2002. The District Development Officer may also take into consideration all the relevant material on record and the Gram Panchayat and the Taluka Development Officer shall give full cooperation at the time of hearing of the matter.

#. It is stated by the petitioners that the District Development Officer has jurisdiction to decide the issue in question and, in future proceedings, the petitioners will not take any objection as regards the jurisdiction of the District Development Officer in deciding the controversy. In short, all the parties have agreed that, the issue in question may be decided by the District Development Officer. However, in case, the final decision is against any of the parties, it will be open for such party to challenge the same in accordance with law.

#. Till the District Development Officer decides the matter, the petitioners are directed to maintain status quo prevailing as on today and, in the meanwhile, they shall not transfer or alienate the properties in question, which are the subject matter of the present controversy, in any manner. In view of the above order, impugned order of the Collector is set aside. It is clarified that the aforesaid order is passed with the consensus of the parties. The petition is accordingly disposed of on the aforesaid terms. Rule is discharged with no order as to costs.

##. In view of the above order, no order in Civil

Application No.7317 of 2002. Civil Application stands disposed of accordingly. Writ to be sent forthwith.

(P.B.Majmudar,J)

(pathan)